SHER TREMONTE LLP

September 19, 2016

**VIA ECF**

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

**Re: *United States v. Gary Hirst,* 15 Cr. 643 (PKC)**

Dear Judge Castel:

We write on behalf of our client, Gary Hirst, in response to the government's letter, dated September 17, 2016, opposing our request that the Court instruct the jury on principles of Cayman Islands law.

The first point of Cayman Islands law on which we requested an instruction – that a board of directors is permitted under Caymans law to ratify share issuances after-the-fact – is relevant because the government has attempted to elicit from its lay witnesses testimony that Board of Directors approval was required in advance for all share issuances. *See, e.g.*, Trial Tr. 104:24-105:2; 358:8-10. The company's Articles of Association contain no such requirement. Therefore, it is important and relevant that the jury be instructed that in the absence of any internal rule to the contrary, the law governing the operations of the company permits after-the-fact ratification. Accordingly, we respectfully request that the Court give the instruction.

The defense has no objection in principle to a hearing in which the government may "test[ ] the outer limits of the principles of Cayman law." Gov't Letter 4.[1] However, the government has not proffered an area of cross-examination that it would

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[1] An affidavit from the testifying expert is not necessary, since the government will be free to ask Mr. Golaszewski whether he agrees or not with the well-established principles of Cayman Islands law outlined in Mr. Dawson's affidavit. Further, as discussed in previous letters, Mr. Golaszewski's testimony will be largely summary, reading relevant provisions of various documents to the jury.

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have a good faith basis to explore. There is no evidence that when the Gerova Board of Directors ratified the Shahini share issuance in October 2010, it lacked any material information about that issuance. To the contrary, the testimony of Michael Hlavsa and the Skype chats the government admitted into evidence demonstrate that the entire transaction was disclosed and subsequently ratified by the Board at least as of the October 6, 2010 meeting. Thus, even on the government's theory, there is no basis for inquiring about whether ratification is valid "even in the presence of fraud or in the absence of full disclosure." *Id.*[2]

With respect to the second point of Cayman Islands law – the authority of a signatory on an account – the defense has provided documents to the government that establish that Mr. Hirst was neither a director or officer of the Pennine Investors Ltd, which the government argues was a "Hirst entity." *See, e.g.*, Gov't Exhibit 910. The government has declined to enter into any fact stipulation regarding Mr. Hirst's role with Pennine. If the government argues that Mr. Hirst had control over, or held some beneficial ownership interest in, funds on an account for which he was merely a signatory, that will mislead the jury on a point of law. Accordingly, the Court should instruct the jury that, pursuant to Cayman Islands law, under which Pennine was incorporated, a mere signatory holds no authority over, and derives no benefit from, funds within an account.

Respectfully submitted,

/s/

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cc: Brian Blais (by ECF)
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Rebecca Mermelstein (by ECF)

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[2] To the extent the government contends that what was not disclosed to the Board was the fact that the shares issued to Shahini were *really* for the benefit of Jason Galanis, that is question-begging in that it presumes that the material fact not disclosed is the fraud itself. It cannot be the government's theory that Mr. Hirst is guilty because he failed to disclose his guilt to the Board of Directors.